IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23988 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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SHANTABEN LAXMANBHAI BHAGIYA - Petitioner(s)
Versus
DISTRICT HEALTH OFFICER - Respondent(s)

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Appearance :
MR NIRAV C THAKKAR for Petitioner(s) : 1,
MR PREMAL R JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 18/04/2006

ORAL JUDGMENT

1. RULE. Learned advocate Mr.Premal Joshi, appearing for the respondent, waives service of Rule.

2. By this petition invoking Articles 226 and 227 of the Constitution, the petitioner has prayed to set aside the order dated 9.11.2005 refusing

permission to engage a lawyer to defend her in the departmental enquiry being conducted against her. The other prayer for a direction to the respondent not to proceed further with the departmental proceedings instituted vide amended chargesheet dated 2.10.2005 till conclusion of the criminal proceedings was not pressed with a view to making a representation. Therefore, the petition stands unconditionally withdrawn to that extent.

3. As for the impugned order dated 9.11.2005, it was submited by learned counsel Mr.Thakkar that there were circumstances seriously prejudicial to the proper defence of the petitioner which required and justified representation of the petitioner by a legal practitioner. He pointed out that the departmental enquiry was conducted by the enquiry officer who was an Assistant District Registrar and the presenting officer was a legally trained Police Inspector of the Anti Corruption Bureau. The departmental enquiry was being proceeded further even as the criminal trial on the same set of allegations was also pending and the petitioner was facing the prospect of major penalty if she were not properly defended. It was also submitted that the petitioner is a female health worker and, admittedly, not conversant with the legal provisions and available defences. It was in such circumstances that the application dated 8.10.2005 was made by her to permit her appearance through an

advocate and that application was dismissed by the impugned order only on the ground that there was no provision for permitting engagement of a lawyer to defend the delinquent officer in the departmental enquiry.

4. Referring to the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1997 and the relevant provisions made therein, it was submitted that the delinquent could not legally engage a legal practitioner unless the person nominated by the disciplinary authority was a legal practitioner or unless the disciplinary authority, having regard to the circumstances of the case, permitted such engagement. In the facts of the present case, the disciplinary authority has neither considered the facts and circumstances of the case nor exercised the power vested in him and taken recourse to the Rule in the impugned order. Therefore, it clearly appears that the impugned order is made without proper application of mind and without exercising the discretion vested in the authority.

5. In view of the apprehension expressed by learned counsel Mr.Joshi, a statement is made by learned counsel Mr.Thakkar, on behalf of the petitioner, that, if the petitioner were permitted to engage a lawyer for the purpose of defence at the enquiry, the petitioner and the legal practitioner of

her choice would co-operate in the expeditious proceeding of enquiry and unnecessary adjournment shall not be sought. It was also fairly conceded that the enquiry officer shall have the power to refuse adjournment in case it was found that appearance of the legal practitioner was causing undue delay in the conduct and conclusion of the enquiry.

6. In the facts and for the reasons discussed hereinabove and in view of the above statement, the impugned order dated 9.11.2005 is set aside and the respondent is directed to allow the petitioner to engage a legal practitioner of her choice, in the special facts and circumstances of the case. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)